


BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2003-3-E – ORDER NO. 2003-351 

MAY 29, 2003

IN RE: Annual Review of Base Rates for Fuel Costs)	ORDER APPROVING
of Duke Power.)	BASE RATES FOR FUEL
)	COSTS

On May 21, 2003, the Public Service Commission of South Carolina (the Commission) held a public hearing on the issue of the recovery of the costs of fuel used in electric generation by Duke Power, a division of Duke Energy Corporation (Duke or the Company), to provide service to its South Carolina retail customers. The procedure followed by the Commission is set forth in S.C. Code Ann. Section 58-27-865 (Supp. 2002). The review in this case uses the actual fuel revenues and expenses from April 2002 through March 2003 to determine an appropriate fuel factor for the period of June 1, 2003 through May 31, 2004.

At the public hearing, William F. Austin, Esquire and Lara S. Nichols, Esquire, represented the Company; Elliott F. Elam, Jr., Esquire, and Hana Pokorna-Williamson, Esquire, represented the Intervenor, the Consumer Advocate for the State of South Carolina (the Consumer Advocate); and F. David Butler, General Counsel, and Jeffrey M. Nelson, Esquire, represented the Commission Staff. The record before the Commission consists of the testimony of two witnesses on behalf of the Company, two witnesses on behalf of the Commission Staff, and five (5) hearing exhibits.

Based upon the evidence of the record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The record of this proceeding indicates that for the period from April 2002 through March 2003, the Company's actual total fuel costs for its electric operations amounted to \$782,596,076. Hearing Exhibit No. 4, Revised Audit Exhibit E.

2. Staff reviewed and compiled a percentage generation mix statistic sheet for the Company's fossil, nuclear and hydro-electric plants for April 2002 through March 2003. The fossil generation ranged from a high of 47% in September and October, 2002 to a low of 39% in December, 2002. The nuclear generation ranged from a high of 60% in May and December, 2002 to a low of 53% in September and October, 2002. The percentage of generation by hydro ranged from 0% to 2% for this period. Hearing Exhibit No. 5; Utilities Department Exhibit No. 3.

3. During the April 2002 through March 2003 period, coal suppliers delivered 15,702,261.26 tons of coal. The Commission Staff's audit of the Company's actual fuel procurement activities demonstrated that the average monthly cost of coal varied from \$32.84 per ton in February, 2003 to \$42.36 per ton in January, 2003. Hearing Exhibit No. 4, Audit Exhibit A.

4. Staff collected and reviewed certain generation statistics of major Company plants for the twelve months ending March 31, 2003. Hearing Exhibit No. 5, Utilities Department Exhibit No. 4. The nuclear fueled Catawba and Oconee Plants were

lowest cost at 0.40 cents per kilowatt-hour. The highest amount of generation was 20,859,664 megawatt-hours produced at the nuclear fueled Oconee Plant. Id.

5. The Commission Staff conducted an extensive review and audit of the Company's fuel purchasing practices and procedures for the subject period. The Staff's audit witness, Jacqueline R. Cherry, testified that the Company's fuel costs were supported by the Company's books and records. Revised Testimony of Cherry, Hearing Exhibit No. 4; Audit Department Exhibits.

6. The Commission recognizes that the approval of the currently effective methodology for recognition of the Company's fuel costs requires the use of anticipated or projected costs of fuel. The Commission further recognizes the fact inherent in the utilization of a projected average fuel cost for the establishment of the fuel component in the Company's base rates that variations between the actual costs of fuel and projected costs of fuel would occur during the period and would likely exist at the conclusion of the period. S.C. Code Ann. §58-27-865 establishes a procedure whereby the difference between the recovery of fuel costs through base rates and the actual fuel costs incurred would be accounted for by booking the difference to unbilled revenues with a corresponding deferred debit or credit.

7. The record of this proceeding indicates that the comparison of the Company's fuel revenues and expenses for the period April 2002 through March 2003 produces a cumulative under-recovery of \$1,121,094. Staff added the projected under-recovery of \$871,022 for April 2003 and the projected under-recovery of \$5,494,525 for May 2003 to the revised cumulative under-recovery of fuel costs that the Company had

incurred for the period April 2002 through March 2003 of \$1,121,094 to arrive at a cumulative under-recovery of \$7,486,641. Revised Cherry Testimony at 2.

8. The Company's projected average fuel expense for the June 2003 through May 2004 period is 1.2587 cents per kilowatt-hour. Hearing Exhibit No. 2, Young Exhibit No. 7.

9. Company witness Steven K. Young, Senior Vice President and Chief Financial Officer, proposes that the fuel component be increased to 1.150 cents per kilowatt-hour in base rates, effective June 1, 2003. Young Testimony at 11.

The exhibits of Staff witness A.R. Watts show that if the base fuel component is increased to 1.150 cents per kilowatt-hour for this period, it will produce an estimated under-recovery of \$23,544,652. Hearing Exhibit No. 5, Utilities Department, Revised Exhibit No. 10.

10. During the period under review, several outages occurred at the Company's nuclear plants. The Commission Staff looked at each plant outage by review of Company reports and correspondence between the Company and the Nuclear Regulatory Commission (NRC) concerning the outages which required reporting. The Staff then spent time with Company representatives to discuss each outage and the sequence of events which led to the outage and those which dictated the duration of the outages. The Staff testified that there were no Company actions which subjected Duke's customers to incurring higher fuel costs. The actual average nuclear system capacity factor for the review period is 95.73%. The major fossil units averaged over 95% availability for the majority of the period under review. Testimony of Watts at Revised

page 2. Company witness Young noted that the Company's achieved capacity factor reflecting reasonable outage time was greater than 92.5% for the current period. Testimony of Young at 7, Hearing Exhibit 2, Young Exhibit 5, page 1 of 3.

11. On May 22, 2003, the Company and the Consumer Advocate entered into a Stipulation regarding purchased power costs. The Stipulation is attached hereto as Exhibit 1. The Stipulation states that a disagreement has arisen between Duke and the Consumer Advocate as to the proper interpretation of the term "fuel cost" as related to purchased power as that term is used in S.C. Code Ann. Section 58-27-865 and its effect on the ability of Duke to recover purchased power costs in its annual fuel proceeding. The Stipulation notes that the issue regards the phrase "fuel costs related to purchased power" and that this issue is currently on appeal and pending before the Richland County Circuit Court in the form of South Carolina Electric and Gas Company's (SCE&G's) and Duke's 2002 fuel cost proceedings, respectively. Duke and the Consumer Advocate anticipate that there will be a final decision on these matters prior to Duke's 2004 fuel case proceeding. Duke and the Consumer Advocate therefore agree and request that the Commission not address the fuel cost related to the purchased power issue described above in its order in Docket No. 2003-3-E. In consideration for the Consumer Advocate not appealing the Commission's Order in Docket No. 2003-3-E regarding this issue, Duke agrees that it will adjust its over- or under-recovery of fuel costs in its next fuel cost proceeding to reflect the final court decisions referred to above, as if such decision had been issued and were applicable to Duke's 2003 fuel costs proceeding in Docket No. 2003-3-E. The two parties further state that if this Order addresses the purchased power

issue described above, the Stipulation shall be null and void and all parties retain any and all legal rights to appeal such order. Finally, the two parties acknowledge and agree that the agreement is the compromise of doubtful and disputed claims and that it shall not be construed as an admission on the part of any party. The two parties further acknowledge and agree that the Stipulation does not establish any precedent with respect to the issues resolved therein, and that the parties will not hereafter in any proceeding contend that any such precedent was established. We would note that no objection to the Stipulation was filed by the Commission Staff. We believe that this Stipulation is reasonable, under the circumstances of this case.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. Section 58-27-865(B)(Supp. 2002), each electrical utility must submit to the Commission its estimates of fuel costs for the next twelve (12) months. Following an investigation of these estimates, and after a public hearing, the Commission directs each electrical utility “to place in effect in its base rate an amount designed to recover, during the succeeding twelve months, the fuel costs determined by the Commission to be appropriate for that period, adjusted for the over-recovery or under-recovery from the preceding twelve-month period.” Id.

2. As stated by the Supreme Court in Hamm v. South Carolina Public Service Commission, 291 S.C. 178, 352 S.E.2d 476, 478 (1987), Section 58-27-865(F) requires the Commission “to evaluate the conduct of the utility in making the decisions which resulted in the higher fuel costs. If the utility has acted unreasonably, and higher fuel costs are incurred as a result, the utility should not be permitted to pass along the

higher fuel costs to its customers.” “[T]he rule does not require the utility to show that its conduct was free from human error; rather it must show it took reasonable steps to safeguard against error.” Id. at 478, citing Virginia Electric and Power Co. v. The Division of Consumer Council, 220 Va. 930, 265 S.E.2d 697 (1980).

3. The Commission recognizes that Section 58-27-865(F) provides it with the authority to consider the electrical utility’s reliability of service, its economical generation mix, the generating experience of comparable facilities, and its minimization of the total cost of providing service in determining whether to disallow the recovery of any fuel costs.

4. Further, S.C. Code Ann. Section 58-27-865(F) (Supp. 2002) provides that:

[t]here shall be a rebuttable presumption that an electrical utility made every reasonable effort to minimize cost associated with the operation of its nuclear generation facility or system.... if the utility achieved a net capacity factor of ninety-two and one-half percent or higher during the period under review. The calculation of the net capacity factor shall exclude reasonable outage time associated with reasonable refueling, reasonable maintenance, reasonable repair, and reasonable equipment replacement outages; the reasonable reduced power generation experienced by nuclear units as they approach a refueling outage; the reasonable reduced power generation experienced by nuclear units associated with bringing a unit back to full power after an outage; Nuclear Regulatory Commission required testing outages unless due to the unreasonable acts of the utility; outages found by the [C]ommission not to be within the reasonable control of the utility; and acts of God. The calculation also shall exclude reasonable reduced power operations resulting from the demand for electricity being less than the full power output of the utility’s nuclear generation system. If the net capacity factor is below ninety-two and one-half percent after reflecting the above specified outage time, then the utility shall have the burden of demonstrating the reasonableness of its nuclear operations during the period under review.

5. This Commission has reviewed, i) all of the evidence of record in this docket, ii) the operating efficiencies of the Company during the review period, and iii) Staff testimony and exhibits, and we find that Duke has met the test of the applicable statute. We have reviewed each outage and the sequence of events which led to each outage and conclude that the outages were the result of reasonable maintenance and equipment repair and replacement. We find that there were no acts of the utility which were imprudent or which subjected Duke's customers to incurring higher fuel costs. Therefore, no disallowance of fuel costs during the review period is justified, and we find that Duke took reasonable steps to safeguard against error and to minimize the total costs of providing service. The purchasing practices of Duke during the review period were prudent. We find that the Company's net capacity factor for the review period, adjusted for reasonable refueling and other outages, exceeds the 92.5% threshold required by the statute. Duke's generating plants were operated in an efficient manner during the review period.

6. After considering the directives of S.C. Code Ann. Section 58-27-865(B) which requires the Commission to place in effect a base fuel cost which allows the Company to recover its fuel costs for the next twelve months adjusted for the over-recovery or under-recovery from the preceding twelve month period, the Commission has determined that the appropriate base fuel factor for the period June 1, 2003 through May 2004 is 1.150 cents per kilowatt-hour. The Commission finds that a 1.150 cents per kilowatt-hour component will allow Duke to recover its projected fuel costs and, at the same time, prevent abrupt changes in charges to Duke's customers.

7. The Stipulation between the Consumer Advocate and Duke of May 22, 2003, attached hereto as Exhibit 1 and related to the purchased fuel controversy between the two parties is hereby approved. We believe that this is a reasonable agreement under the circumstances of this case. We will not address purchased power costs in this Order. The Consumer Advocate's Motion made at the close of the hearing is hereby denied, due to our approval of the Stipulation.

IT IS THEREFORE ORDERED THAT:

1. The base fuel factor for the period June 2003 through May 2004 is set at 1.150 cents per kilowatt-hour.
2. Duke shall file an original and ten (10) copies of the fuel tariff within ten (10) days of the receipt of this Order.
3. Duke shall comply with the notice requirements set forth in S. C. Code Ann. Section 58-27-865(B) (Supp. 2002).
4. Duke shall continue to file the monthly reports as previously required.
5. Duke shall account monthly to the Commission for the differences between the recovery of fuel costs through base rates and the actual fuel costs experienced by booking the difference to unbilled revenues with a corresponding deferred debit or credit.
6. Duke shall submit monthly reports to the Commission of fuel costs and scheduled and unscheduled outages of generating units with a capacity of 100 MW or greater.

7. The May 22, 2003 Stipulation between the Consumer Advocate and Duke is approved. The Consumer Advocate's Motion made at the close of the hearing is denied.

8. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Mignon L. Clyburn, Chairman

ATTEST:


Gary E. Walsh, Executive Director

(SEAL)

STIPULATION

This stipulation, by and between Duke Power, a division of Duke Energy Corporation ("Duke") and the Consumer Advocate for the State of South Carolina ("Consumer Advocate"), regarding the Public Service Commission of South Carolina ("Commission") Docket No. 2003-3-E is entered into by Duke and the Consumer Advocate on May 22, 2003.

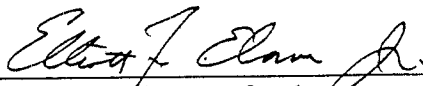
A disagreement has arisen between Duke and the Consumer Advocate as to the proper interpretation of the term "fuel cost" as related to purchased power as that term is used in S.C. Code Ann. §58-27-865 and its effect on the ability of Duke to recover purchased power costs in its annual fuel proceeding.

This issue, "fuel costs related to purchased power", is currently on appeal and pending before the Richland Circuit Court in Civil Action Nos. 02-CP-40-3600 and 02-CP-40-3984, South Carolina Electric & Gas Company's (SCE&G) and Duke's 2002 fuel cost proceedings, respectively. Duke and the Consumer Advocate anticipate that there will be a final decision on these matters prior to Duke's 2004 fuel cost proceeding.

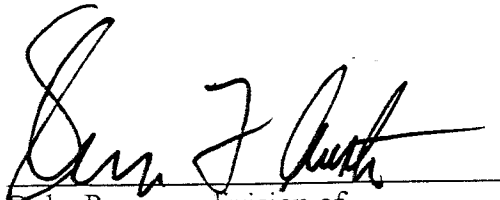
Duke and the Consumer Advocate therefore agree and request that the Commission not address the fuel cost related to the purchased power issue described above in its order in Docket No. 2003-3-E. In consideration for the Consumer Advocate not appealing the Commission's Order in Docket No. 2003-3-E regarding this issue, Duke agrees that it will adjust its over-or under-recovery of fuel costs in its next fuel cost proceeding to reflect the final court decisions referred to above, as if such decisions had been issued and were applicable to Duke's 2003 fuel costs proceeding in Docket No. 2003-3-E.

Should the Commission's Order in Docket No. 2003-3-E address the "fuel costs related to purchased power" issue described above, this stipulation shall be null and void and all parties retain any and all legal rights to appeal such order.

The parties acknowledge and agree that this agreement is the compromise of doubtful and disputed claims and that it shall not be construed as an admission of any fact or claim on the part of any party. The parties further acknowledge and agree that this agreement does not establish any precedent with respect to the issues resolved herein, and that the parties will not hereafter in any proceeding contend that any such precedent was established.



Consumer Advocate for the
State of South Carolina



Duke Power, a division of
Duke Energy Corporation,
By its Counsel, William F. Austin